IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.5173 OF 1990

Pandit Ramchandra Suryavanshi)
Indian Citizen,Aged 54 years,)
Occupation Agriculturist,)
resident of Jakhangaon,)
Taluka Chatau, Dist.Satara.)..PETITIONER

Versus

1.Shri Shankar Baburao Nikam)
Indian Citizen, Age 45 years)
Occupation Agriculturist,)
Resident of Jakhangaon,Taluka)
Khatau, Dist.Satara.)
2.Shankar Mahadu Shinde,)
(Deceased) through his heirs)
and legal representatives:)
2(a)Bajirao Shanker Shinde,)
Indian Citizen, AGe 40 years)
2(b)Bhanudas Shankar Shinde,)
Indian Citizen, Age 38 years,)
2(c) Jalindar Shankar Shinde,)
Indian Citizen, Age 35 years)
2(d)Hindurao Shankar Shinde,)
Indian Citizen, AGe 32 years,)
2(e)Ramdu Shankar Shinde,)
Indian Citizen, Age 32 years)
2(f)Shavabai Shankar Shinde,)
Age 30 years, Indian Citizen)
(W.P.Stand dismissed for non-)
-Prosecution as against the)
Respondent No.2F vide order)
dt. 7-6-04))
2(g)Hirabai Prabhakar Deshmukh)
Aged 28 years, Indian Citizen)
Nos.2(a) to 2(f)Agriculturists)
residents of Jakhangaon, Taluka)
Khatau, District: Satara.)
No.2(g) Agriculturist, resident)
of Gopuj, Taluka Khatau, Dist.)
Satara.)
3.Hanumant Subhedar Shinde,)
Indian Citizen, Age 37 years,)
Occupation Agriculturist,)
resident of Jakhangaon,)
Taluka Khatau, Dist.Satara.)..RESPONDENTS

Mr. Harshad Palwe, for the Petitioner

Mr. Uday Warunjikar, for Respondent Nos. 2A, 2B,
2C, 2D, 2E, and 2G and 3.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 12, 2005

ORAL JUDGMENT:

. The petitioner had filed a suit before the

Civil Court for eviction of Respondents 1, 2 and 3. In that suit various issues came to be framed. The learned trial Court considering the provisions of the Bombay Tenancy & Agricultural Lands Act, 1948 was pleased to refer the issue Nos. 1, 4 and 5 to the Tahsildar. The Tahsildar in so far as Issue No.1 which was, whether Kamalabai was a permanent tenant, answered the same in the affirmative. In so far as Issue No.4, it was held that Defendant NOs. 2 and 3 had proved that they were tenants for more than 40 years since time of Subhedar Mahadu Shinde. In so far as Issue No.5, whether the Defendant Nos. 2 and 3 had become deemed purchasers of the suit property on 11th November, 1970, answered the same in the negative. Aggrieved the Respondent Nos. 2 and 3 preferred an Appeal before the Appellate Tribunal. The learned Appellate Tribunal by its impugned order of 26th February, 1985 was pleased to reverse the finding recorded by the Tahsildar and allowed the Appeal and held that the Respondent Nos. 2 and 3 had proved that they had become owners of the suit land on 18th November, 1970 i.e. the date of death of permanent tenant. A Revision preferred by the present petitioner came to be dismissed by order dated 28th February, 1990. It is this order which is the subject matter of the present petition.

2. On behalf of the petitioner his learned Counsel contends that he is not challenging the finding in so far as Issue Nos. 1 and 4 are

concerned. The main contention as urged on behalf of the petitioner is that the application under Section 32G was filed by Respondent Nos. 2 and 3 during the life time of Kamalabai. Kamalabai was a widow and considering the provisions of Section 31 of B.T. & A.L. Act such an application was not maintainable. Once that be the case it is contended that the certificate issued under Section 32G was a nullity. Respondent No.1 was appearing in the proceedings earlier as a Power of Attorney. That Power of Attorney stood revoked on death of Kamalabai. No notice was given to the petitioner herein and in these circumstances it is submitted that the impugned orders of the Appellate and Revisional Authority are liable to be set aside.

3. On the other hand on behalf of the respondent Nos. 2 and 3 learned Counsel submits that the orders issued under Section 32G and subsequent certificate under Section 32M have not been challenged and once that be the case even if there be some irregularity in the proceedings under Section 32G this Court ought not to interfere considering the justice of the matter in the exercise of its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

4. To understand the controversy it will be necessary to set out a few facts. Kamalabai claimed the rights to the land as a permanent tenant from

the original owner. The respondent Nos. 2 and 3 claimed as tenants from Kamalabai. Kamalabai expired either on 11th or 18th November, 1970. For the purpose of this discussion it will be taken as 18th November, 1970 considering that the record shows two different dates. The respondent Nos. 2 and 3 during the life time of Kamalabai applied under Section 32G before the Tahsildar. Appearance on behalf of Kamalabai was put in by Respondent NO.1 as her Power of Attorney. Actual proceedings seems to have been commenced two years after the death of Kamalabai as can be seen from the order of the Revisional Authority. The Respondent No.1 was present. It also appears that the name of Respondent No.1 was entered in the record of rights. The respondent Nos.2 and 3 expressed their willingness to purchase the suit land. Based on that the Certificate under Section 32G was issued in favour of the Respondent Nos. 2 and 3.

5. On a perusal of the provisions of B.T. & A.L. Act it will be clear that purchase against the widow is postponed till her death. On her death it is open to the legal heirs to take steps to terminate the tenancy within one year and on failure to do so it is open to the tenants to apply for purchase. Admittedly in the present case neither the petitioner nor the respondent No.1, both of them claim as legatees of Kamalabai took any steps to terminate the tenancy. In these circumstances it

was open to Respondent Nos. 2 and 3 to have applied for purchase of the land.

6. From the above the question is whether this Court ought to interfere with the orders of the Appellate or Revisional Authority which has upheld the claim of Respondent Nos. 2 and 3 as tenants and the right to the property. It is no doubt true, as urged on behalf of the petitioner by the learned Counsel that, the respondent Nos.2 and 3 could not have initially initiated proceedings under Section 32G during the life time of Kamalabai. The question really is whether because of that the order can be said to be a nullity at law. The second aspect is no steps were taken to challenge the order under Section 32G or the subsequent certificate issued under Section 32M. The proceedings though initiated during the life time of Kamalabai were commenced two years subsequent to the death of Kamalabai. The respondent No.1 was present. The name of Respondent No.1 was shown in the record of rights. In my opinion, therefore, considering theses aspects of the matter it really cannot be said that even though there may be some irregularities that this would be a fit case for this Court to exercise its extra ordinary jurisdiction. Respondent Nos.2 and 3 admittedly were tenants. They had applied under Section 32G which could only be pursuant to a notice under Section 32G. Kamalabai was served. Appearance was put through a Power of Attorney,

respondent No.1 and on her death the respondent No.1 whose name was shown on tenancy record was present in the course of the proceedings. At the highest the proceedings against Kamalabai would be postponed during her life time and could have been continued after her death.

. Considering the above aspects in my opinion I find no reason to interfere with the impugned orders.

7. Rule discharged. All interim orders stand vacated.

8. Considering that the suit is of the year 1971 the trial Court is directed to dispose of the suit at any rate within one and half years from today.

(F.I.REBELLO, J.)